

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

May 28, 2019

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

RONALD DONTA JENNINGS,

Defendant.

NO: 2:18-CR-213-RMP

ORDER DENYING DEFENDANT'S
MOTION TO SUPPRESS

BEFORE THE COURT is an amended motion to suppress evidence by Defendant Ronald Donta Jennings, ECF No. 45. The Court heard oral argument on the motion at a pretrial conference on Friday, May 24, 2019. Defendant, who is in custody, was present and represented by Bevan Maxey. The Government was represented by Assistant United States Attorney Patrick Cashman, appearing on behalf of Assistant United States Attorney Caitlin Baunsgard. The Court heard testimony from former Drug Enforcement Administration ("DEA") Task Force Officer Michael Bahr, Spokane Police Department Detective Bruce Palmer, and DEA Special Agent Marcus Chernecke. The Court admitted exhibits and heard

1 argument from counsel. Having reviewed the parties' filings, heard the argument
2 and testimony presented at the suppression hearing, and reviewed the relevant law,
3 the Court is fully informed.

4 **BACKGROUND**

5 The investigation preceding Defendant's arrest involved five controlled buys
6 of opioid drugs between August and November 2018. Two of those controlled buys
7 allegedly involved Defendant Jennings. According to the testimony of Detective
8 Palmer, former Officer Bahr, and Agent Chernecke, all of whom the Court found to
9 be credible, the officers involved worked in close concert on the investigation and
10 uniformly had substantial experience investigating illegal drug distribution.

11 ***Buy 1***

12 On approximately August 24, 2018, a confidential informant ("CI") contacted
13 an individual the Court will refer to as "Suspect 1" to purchase one quarter ounce of
14 "China White," a particularly pure form of synthetic heroin. ECF Nos. 2 at 3; 45 at
15 28. The substance that the CI purchased during the controlled buy in north Spokane,
16 Washington, was later confirmed to contain fentanyl.

17 ***Buy 2***

18 On September 7, 2018, at the direction of law enforcement, the CI contacted
19 Suspect 1 to purchase one ounce of China White. At the meeting location that the
20 CI and Suspect 1 arranged, surveillance observed Suspect 1 enter the CI's vehicle.
21 *Id.* A black male who appeared to be "thirty's (30's)[sic], bald, wearing glasses, a

1 gray sweatshirt and black shorts” (the “unknown male”) approached the vehicle, at
2 which point Suspect 1 got out of the vehicle to speak to him. ECF No. 2 at 6.
3 Officer Bahr testified that he was “shorter, stockier” and in his “mid- to late-
4 thirties.” Suspect 1 reentered the CI’s vehicle, and they drove to another parking lot,
5 where the unknown male entered the CI’s vehicle. The CI later informed law
6 enforcement that he had purchased a white powdery substance from the unknown
7 male at that time. The unknown male then entered a black 2001 Lexus, with
8 Washington license plate 070-YSD (the “Lexus”) and left the area.

9 Officer Bahr followed the Lexus to 1425 Maxwell Avenue in Spokane. He
10 could not determine how many people were in the car or view the driver. He did not
11 hear other officers report whether they could observe the driver of the vehicle.
12 Accordingly, there is no other individual identified and associated with the Lexus
13 from the record of this controlled buy.

14 Law enforcement submitted the substance purchased at this buy for testing,
15 and it was found to contain fentanyl.

16 ***Buy 3***

17 On October 4, 2018, law enforcement directed the CI to contact Suspect 1 to
18 purchase a half ounce of China White. From the arranged meeting location, the CI
19 and Suspect 1 drove to the parking lot of a restaurant. There, law enforcement
20 observed Suspect 1 exit the CI’s vehicle and briefly enter the passenger side of a
21 black Cadillac (the “Cadillac”) driven by an individual the Court refers to as

1 “Suspect 2” before returning to the CI’s car. Law enforcement followed Suspect 2
2 in the Cadillac as Suspect 2 made another stop and then returned to 1425 Maxwell
3 Avenue.

4 Law enforcement collected 9.25 grams of a white substance wrapped in
5 plastic from the CI.

6 ***Buy 4***

7 On October 24, 2018, the CI arranged another controlled purchase from
8 Suspect 1. Prior to the arranged meeting time, law enforcement observed the
9 Cadillac being driven away from the Maxwell Avenue address. Law enforcement
10 followed the Cadillac to Zip’s drive-through restaurant in Spokane Valley,
11 Washington.

12 There, a black BMW model 740i without license plates (the “BMW”) arrived
13 and parked a couple of parking spaces away from Suspect 2 in the Cadillac. The
14 driver exited and approached the passenger door of the Cadillac. Officer Bahr
15 testified that he saw the driver of the BMW for several seconds as he stood up from
16 his driver’s side door and walked to the Cadillac. The driver of the BMW entered
17 the Cadillac and remained there for less than a minute. That individual then returned
18 to the BMW. Both vehicles exited the parking lot and went separate ways.

19 Surveillance attempted to follow the BMW but the BMW drove through parking
20 lots, made several turns, and other maneuvers, which Officer Bahr interpreted as
21 “heat checks” to ascertain whether the driver was being followed by law

1 enforcement. Meanwhile surveillance followed the Cadillac back to 1425 Maxwell
2 Avenue, before Suspect 2 in the Cadillac met up with the CI and Suspect 1 at the
3 arranged location. Suspect 2, in the Cadillac, led the CI's vehicle to a new location.
4 Suspect 1 joined Suspect 2 in the Cadillac briefly, then returned to the CI's vehicle.
5 Law enforcement followed the Cadillac back to Maxwell Avenue.

6 The substance that the CI received on October 24, 2018, tested positive for
7 fentanyl. Law enforcement obtained and executed a search warrant on the Maxwell
8 Avenue address, and arrested Suspect 2 on November 2, 2018. Officer Bahr and
9 Detective Palmer recounted that Suspect 2 said he purchased fentanyl from one
10 supplier, a black male he knew only as "Actrite." Suspect 2 identified the cell phone
11 number that he called to reach Actrite. The messages exchanged between Suspect 2
12 and the unknown person at the identified cell phone number were messages
13 regarding meetings, which the officers considered to be consistent with drug
14 distribution. The subscriber information for the identified cell phone number is
15 "John Gotti," with an address listed on Upton Avenue in Spokane. Detective Palmer
16 testified that the use of an alias is common among the subjects of the drug
17 distribution investigations in which he has worked.

18 The Government submitted as Exhibit 1 Officer Bahr's handwritten notes
19 from the November 2, 2018 interview that he and Detective Palmer conducted with
20 Suspect 2. Officer Bahr explained that the notes reflect that Suspect 1 described
21 Actrite as being a black male in his late 20s or in his 30s, skinny, taller, with a

1 medium- to lighter skin tone, and having a fade hairstyle, the meaning of which
2 Officer Bahr testified that he did not understand.

3 ***Buy 5***

4 Later in the day on November 2, 2018, Suspect 2 texted his alleged source of
5 supply, known as Actrite, to arrange a controlled purchase of fentanyl. Officer Bahr
6 and Detective Palmer followed Suspect 2's Cadillac and saw it park behind the same
7 Lexus that they had observed at the controlled buy on September 7, 2018. Detective
8 Palmer testified that he was able to get a "good look" at the driver of the Lexus.
9 Officer Bahr and Detective Palmer watched Suspect 2 enter the passenger seat of the
10 Lexus. Surveillance units followed the Lexus around the block. The Lexus then
11 returned Suspect 2 to his Cadillac. The Lexus drove erratically, and surveillance
12 stopped following it. Suspect 2 told Officer Bahr that the individual in the Lexus,
13 from whom he bought the white powdery substance for \$800, was Actrite.

14 **November 8, 2018**

15 On November 6, 2018, Detective Palmer determined by reviewing Spokane
16 Police records that the Lexus was associated with an address on East Glass Avenue
17 in Spokane, so law enforcement began surveillance on that unit. On the morning of
18 November 7, 2018, the Lexus was parked in front of the East Glass address. By
19 evening, the Lexus was gone, and the BMW from the fourth controlled buy on
20 October 24, 2018, was parked there instead.

1 On the morning of November 8, 2018, Officer Bahr saw “a black male that
2 [sic] was clearly not the driver of the Lexus or the BMW from October 24, 2018”
3 drive away from the East Glass residence in the BMW. ECF No. 2 at 21–22.
4 Officer Bahr testified that the individual he observed was dark skinned,
5 approximately six feet tall, with longer hair and a heavier build than the person
6 Officer Bahr recalled from the fourth controlled buy, on October 24, 2018.
7 Detective Palmer described the individual as having dreadlocks. Surveillance
8 followed the BMW to the Platinum Shine car wash and detailing shop on East
9 Sprague Avenue in Spokane Valley. There, the driver of the BMW parked next to
10 the Lexus from the second and fifth controlled buys and went inside.

11 Officer Bahr and Detective Palmer observed individuals entering, exiting, and
12 moving around inside the Platinum Shine throughout the morning. Detective Palmer
13 was “pretty sure” that an individual wearing a hooded sweatshirt was the person
14 Detective Palmer had seen driving the Lexus on November 2, 2018, but Officer Bahr
15 could not see his face clearly while the individual kept the hood up, partially
16 obscuring his face.

17 At approximately noon, the individual wearing the hooded sweatshirt exited
18 the Platinum Shine and drove the BMW to a nearby restaurant. Officer Bahr
19 watched the individual, still wearing the hood, walk into the restaurant. Detective
20 Palmer was stationed across the street. Approximately ten minutes later, the
21 individual exited the restaurant with his hood down, and Officer Bahr saw the

1 individual clearly. Officer Bahr “was positive” that it was the same individual who
2 drove the BMW at the Zip’s drive-in during the October 24, 2018 buy, and Officer
3 Bahr arrested him.

4 Detective Palmer arrived at the arrest scene either seconds later, according to
5 Detective Palmer, or up to “a minute and a half” later, according to Officer Bahr,
6 and recognized the arrested individual, later identified as Jennings, as the individual
7 who Detective Palmer had seen driving the Lexus on November 2, 2018. Detective
8 Palmer testified that even if Officer Bahr had not initiated the arrest of Jennings
9 based on Officer Bahr’s recognition of Jennings that Detective Palmer would have
10 arrested Jennings, because Detective Palmer identified him from November 2, 2018.
11 Officers conducted a search incident to arrest and gathered the evidence that
12 Defendant seeks to suppress.

13 **RELEVANT LAW**

14 ***Probable Cause***

15 Evidence obtained subsequent to a violation of the Fourth Amendment is
16 tainted by illegality and is inadmissible as “fruits of the poisonous tree” unless the
17 evidence was “purged of the primary taint.” *United States v. Washington*, 490 F.3d
18 765, 774 (9th Cir. 2007) (quoting *Wong Sun v. United States*, 371 U.S. 471, 488
19 (1963)). There are three categories of lawful stops under the Fourth Amendment of
20 the U.S. Constitution. *Morgan v. Woessner*, 997 F.2d 1244 (9th Cir. 1993). First,
21 law enforcement may stop a person for questioning at any time, so long as the

1 person recognizes that he or she is free to leave. *Id.* at 1252. Second, law
2 enforcement may seize a person for a brief, investigatory stop if the officer “has
3 reason to believe that he is dealing with an armed and dangerous individual,
4 regardless of whether he has probable cause to arrest the individual for a crime.”
5 *Terry v. Ohio*, 392 U.S. 1, 27 (1967). Third, a seizure may amount to a full-scale
6 arrest. *Morgan*, 997 F.2d at 1252.

7 The Fourth Amendment requires a warrantless arrest in a public place to be
8 supported by probable cause. *Atwater v. City of Lago Vista*, 532 U.S. 318, 354
9 (2001). Probable cause to justify an arrest ““means facts and circumstances within
10 the officer’s knowledge that are sufficient to warrant a prudent person, or one of
11 reasonable caution, in believing, in the circumstances shown, that the suspect has
12 committed, is committing, or is about to commit an offense.”” *United States v.*
13 *Johnson*, 913 F.3d 793, 801 (9th Cir. 2019) (quoting *Michigan v. DeFillippo*, 443
14 U.S. 31, 37 (1979)). Although “police may rely on the totality of facts available to
15 them in establishing probable cause, they also may not disregard facts tending to
16 dissipate probable cause.” *United States v. Ortiz-Hernandez*, 427 F.3d 567, 574 (9th
17 Cir. 2005).

18 The facts and circumstances at issue “are those that were known to the officer
19 at the time of the arrest.” *Rosenbaum v. Washoe County*, 663 F.3d 1070 (9th Cir.
20 2011). In circumstances involving multiple officers at the scene of an arrest, the
21 totality of the circumstances includes the officers’ “collective knowledge.”

1 *Blankenhorn v. City of Orange*, 485 F.3d 463, 472 (9th Cir. 2007). Evidence
2 supporting probable cause need not be admissible; however, it must be legally
3 sufficient and reliable. *Crowe v. County of San Diego*, 608 F.3d 406, 432–33 (9th
4 Cir. 2010). A court may consider the experience and expertise of the officers
5 involved in the investigation and arrest when evaluating probable cause. *United*
6 *States v. Hoyos*, 892 F.2d 1387, 1392 (9th Cir. 1989), overruled in other part by
7 *United States v. Ruiz*, 257 F.3d 1030 (9th Cir. 2001).

8 ***Scope of Inquiry for Suppression Motion***

9 Ninth Circuit precedent establishes that a court must determine whether
10 probable cause existed for a warrantless arrest by considering “all the facts known to
11 the officers and . . . all the reasonable inferences that could be drawn by them before
12 an arrest.” *United States v. Martin*, 509 F.2d 1211, 1213 (9th Cir. 1975). The Court
13 does not look solely to the four corners of the post-arrest complaint and any
14 supporting affidavit. *See id*; *see also United States v. Fernandez-Guzman*, 577 F.2d
15 1093 (7th Cir. 1978) (“[I]n the context of a warrantless arrest, the court deciding a
16 motion to suppress should consider evidence regarding the existence of probable
17 cause at the time of arrest and is not limited to the four corners of the post-arrest
18 complaint.”). Therefore, “when the facts known to the officers at the time of arrest
19 are such as to make the arrest constitutional when it occurred, the omission of some
20 of those facts from later-filed . . . complaints cannot make the arrest retroactively
21 unconstitutional.” *Fernandez-Guzman*, 577 F.2d at 1099.

1 ***Resemblance to a Physical Description***

2 Mere resemblance to a general physical description of a suspect is insufficient,
3 alone, to establish probable cause. *United States v. Lopez*, 482 F.3d 1067, 1073–74
4 (9th Cir. 2007); *see also United States v. Montero-Camargo*, 208 F.3d 1122, 1132,
5 1134, n. 22 (9th Cir. 2000) (en banc) (holding that an individual’s race or a shared
6 racial characteristic cannot alone generate reasonable suspicion for a stop).

7 However, law enforcement may consider a general physical description in
8 determining probable cause where a resemblance to an otherwise too vague
9 description “is found in combination with other particularized bases for suspicion.”

10 *Lopez*, 482 F.3d at 1074; *see also Montero-Camargo*, 208 F.3d at 1134, n. 1
11 (acknowledging importance of “the use of racial or ethnic appearance as *one* factor
12 relevant to reasonable suspicion or probable cause when a particular suspect has
13 been identified as having a specific racial or ethnic appearance.”).

14 ***Inevitable Discovery***

15 The Government also argues in this matter that the evidence at issue should
16 not be suppressed due to the doctrine of inevitable discovery. Under circumstances
17 in which a warrantless arrest was not supported by probable cause, the evidence
18 gathered after the arrest may qualify for an exception to the exclusionary rule based
19 on the premise of inevitable discovery. The inevitable discovery doctrine “allows
20 for the admission of evidence that would have been discovered even without the
21 unconstitutional source. *Utah v. Strieff*, 136 S. Ct. 2056, 2061 (2016). The

1 exception recognizes the purpose of the exclusionary rule as “putting the police in
2 the same, not a *worse*, position that they would have been in if no police error or
3 misconduct had occurred.” *Nix v. Williams*, 467 U.S. 431, 443 (1984) (emphasis in
4 original). “If the prosecution can establish by a preponderance of the evidence that
5 the information ultimately or inevitably would have been discovered by lawful
6 means[,] then the deterrence rationale has so little basis that the evidence should be
7 received.” *Id.* at 444.

8 **DISCUSSION**

9 The principal question is whether the officers who arrested Jennings on
10 November 8, 2018, had probable cause to believe that Jennings was the person who
11 committed or was about to commit a criminal offense such as distribution of
12 fentanyl.

13 To identify Jennings as the appropriate individual to arrest, the investigating
14 officers relied on their own observations of individuals and vehicles present at prior
15 controlled buys, in addition to the description given by Suspect 2 of his supplier,
16 Actrite. Officer Bahr did not include a detailed description of Actrite in his reports
17 or the affidavit filed in this matter, beyond identifying him as a “black male.”
18 However, even prior to Officer’s Bahr’s testimony at the suppression hearing, the
19 record supports the reasonable inference that Officer Bahr had more than a
20 generalized sense of Actrite’s physical characteristics, because Officer Bahr reported
21 that the “black male” who exited the East Glass house on the morning of November

1 8 and drove the BMW to the car wash was “clearly not the driver of the Lexus or the
2 BMW from October 24, 2018.” ECF No. 2 at 21. At the suppression hearing,
3 Officer Bahr and Detective Palmer both recounted in detail why they did not suspect
4 the black male who drove the BMW from the East Glass house to Platinum Shine to
5 be Actrite and how they recognized Jennings as the person who they knew only as
6 Actrite at the time of the arrest.

7 Moreover, factors beyond physical resemblance support a conclusion that
8 Jennings was connected to the distribution of fentanyl. Corroborating evidence
9 includes that right before being arrested, Jennings was driving the BMW that was
10 observed during the fourth controlled buy, on October 24, 2018, and which was
11 driven by another individual from a residence in front of which the Lexus previously
12 had been parked on the morning of November 8, 2018. In addition, the BMW had
13 been parked at Platinum Shine throughout the morning of November 8, 2018, right
14 next to the Lexus. Jennings’ close association with the BMW that was observed in
15 connection with controlled drug buys and in connection to the Lexus, also observed
16 during controlled drug buys, weighs heavily in a finding that a prudent person
17 would have concluded that there was a fair probability that Jennings had committed
18 a crime. *See Lopez*, 482 F.3d at 1072.

19 Defendant argues that Officer Bahr recollected that Detective Palmer told him
20 that Detective Palmer had seen Jennings at the second controlled buy conducted on
21 September 7, 2018. However, Detective Palmer testified that he did not see

1 Jennings at the September 7 controlled buy. Despite this inconsistency, the Court
2 finds that there is a sufficient basis to support probable cause for Jennings' arrest on
3 November 8, 2018. In addition to the positive identification of Jennings by Officer
4 Bahr and Detective Palmer, there was an established pattern of activity involving
5 the Lexus and the BMW with the distribution of drugs, and a direct connection
6 between Jennings and the BMW.

7 The totality of the circumstances, informed by the collective knowledge of the
8 officers involved in the investigation that preceded Jennings' arrest, provided
9 sufficient information to lead a prudent person to believe that Jennings had
10 committed or was committing a crime. Therefore, the Court finds it unnecessary to
11 proceed to analyze whether discovery of the evidence gathered incident to arrest was
12 inevitable.

13 Accordingly, **IT IS HEREBY ORDERED** that Defendant's
14 Amended Motion to Suppress, **ECF No. 45**, is **DENIED**.

15 The District Court Clerk is directed to enter this Order and provide copies to
16 counsel.

17 **DATED** May 28, 2019.

18
19 s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
20 United States District Judge
21